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NATIONAL TOBACCO COMPANY, LP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RAYMOND RILEY p.k.a. Boots Riley,
SOLOMON DAVID and MARLON IRVING
p.k.a. Lifesavas,

Plaintiffs,

v.

NATIONAL TOBACCO COMPANY LP,
Defendant.

Case No. C-08-01931 JSW

**ADMINISTRATIVE MOTION BY
DEFENDANT NATIONAL TOBACCO
COMPANY LP TO CONSIDER
WHETHER CASES SHOULD BE
RELATED**

[Local Rule 3-12(b)]

Before: The Honorable Jeffrey S. White

[FILED VIA E-FILING]

Pursuant to Local Rule 3-12, Defendant National Tobacco Company (“NTC”) submits this administrative motion to consider whether this case, Raymond Riley, et al., v. National Tobacco Company LP, United States District Court for the Northern District of California, Case No. C-08-1931 JSW, should be related with Timothy Parker and Xavier Mosley v. National Tobacco Company LP, United States District Court for the Northern District of California, Case No. C 08-01933 WHA, filed with this Court on April 11, 2008.

These cases involve the same defendant, National Tobacco Company LP (“NTC”). Plaintiffs in both actions are represented by the same counsel, Anthony E. McNamer. The dispute between NTC and plaintiffs in both the Riley and Parker actions arose out of NTC’s marketing campaign for their Zig-Zag Live Tour 2007, in which the Riley and Parker plaintiffs all performed, and NTC’s accurate and truthful use of plaintiffs’ likenesses on its website. Plaintiffs in both the Riley and Parker actions make the same claims against NTC, namely: federal trademark claims based on 15 U.S.C. §1125, misappropriation claims under Cal. Civ. Proc. § 3344, and unfair competition claims based on Cal. Bus. & Prof. Code § 17200. See accompanying Declaration of Bruce H. Jackson in support of this Administrative Motion, Exhibit A and Exhibit B. Both actions arise from substantially identical transactions, happenings, and events, involve substantially the same parties, and will involve determination of some of the same or similar questions of law and fact.

It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges. Importantly, motions to dismiss, stay or transfer, in favor of a prior-filed New York District Court action, have been filed in both cases (the first such motion set for hearing in this Court on June 13, 2008, at 9:00 a.m) on grounds of the “first filed rule”, improper venue and forum non conveniens. Having those important motions, grounded in the same facts and legal contentions, heard by the same Judge, will avoid burdensome duplication of labor for the Court and the parties and will avoid potentially inconsistent

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1 rulings. Relating the cases will allow the elimination of duplicative discovery proceedings, prevent
2 inconsistent pre-trial rulings and conserve the resources of the parties, their counsel and the
3 judiciary.

4 Dated: May 5, 2008

Respectfully submitted,

5 BAKER & McKENZIE LLP
6 BRUCE H. JACKSON

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8 By: /s/
9 Bruce H. Jackson
10 Attorneys for Defendant
11 NATIONAL TOBACCO COMPANY, LP
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